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SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1954

No. 749

Norman C. Bernhardt,

Petitioner.

vs.

Polygraphic Company of America, Inc.,

Respondent.

Brief In Opposition To Petition For Certiorari
To The United States Court of Appeals
For The Second Circuit

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BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

A. Opinions Below

Proceedings in this case are reported at 122 F. Supp 733 (D.C. Vt. 1954) and 218 F.2d 948 (2d Cir. 1955).

B. Argument

Petitioner says that Section 3 of the United States Arbitration Act (9 U.S.C., Section 3) may not be applied in diversity cases by a federal court sitting within the boundaries of a "non-enforcing state" such as Vermont. He says that the *Erie* doctrine requires the federal court to disregard the federal statute in order that the "substantial result" of the litigation may be conformed to that which would obtain under the procedure of the state courts. He says that the opinion of the Court of Appeals herein disregards the views of this Court expressed in *Guaranty Trust v. York*, 326 U.S. 99 and related cases, e.g., *Angel v. Bullington*, 330 U.S. 183, *Woods v. Interstate Realty Co.*, 337 U.S. 535, and *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541. But examination of those authorities shows that this court was there dealing with a problem which is remote from the one at hand. Those cases involved the attempt to enforce in federal court a state-created right which had become unenforceable in state court. No federal right was involved in those cases and this Court recognized (330 U.S. at page 192) that where a federal right is claimed: "The limitations

upon the courts of a state do not control a federal court sitting in the State." Likewise, in the *Guaranty Trust* case, this court "put to one side the considerations relevant in disposing of questions that arise when a federal court is adjudicating a claim based on federal law." (326 U.S. at page 101). Nothing in these cases implies that Congress must conform the procedure of the federal courts to that followed in the state courts.

Petitioner says further that the decision of the Court of Appeals in this case conflicts with decisions in the Fifth and Sixth Circuits. But the cases he cites do not have the effect claimed. *Gatliff Coal Co. v. Cox*, 142 F.2d 876 (6th Cir. 1944) held that the United States Arbitration Act did not, by its terms, apply to an agreement to arbitrate a dispute arising under the Fair Labor Standards Act (29 U.S.C., Section 201, et seq.). *Tejas Development Co. v. McGough Bros.*, 165 F.2d 276 (5th Cir. 1947) held that an arbitration award which was invalid under state law, and which had been announced prior to the commencement of any proceedings in the federal court, had no greater validity in federal court than it would have had in state court. Here too the court decided that the federal statute did not by its terms apply. Neither of these cases suggests that the federal statute, had it been found applicable, would have been disregarded because the state courts would not have provided analagous relief. In fact, the decision of the Court of Appeals in this case is in harmony with the only cases actually involving this issue—*Murray Oil*

Products Co. v. Mitsui & Co., 146 F.2d 381 (2d Cir. 1944) in the same circuit and, in the Fifth Circuit, *Parry v. Bache*, 125 F.2d 493 (5th Cir. 1942). Both of these were removed cases, both involved application for relief under Section 3 of the United States Arbitration Act, and in each the court held that it was the federal and not the state procedure which governed.

CONCLUSION

C. WHEREFORE respondent prays that the petition for writ of certiorari to the United States Court of Appeals for the Second Circuit be denied.

Respectfully submitted.

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